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**Notes for the Minister of Justice's Appearance before the House of Commons Justice and Human Rights Committee**

**Bill C-36 - *Anti-terrorism Act***

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CHECK AGAINST DELIVERY

Mr. Chair:

I am pleased to appear today before this Committee as it begins its formal consideration of Bill C-36. An *Anti-Terrorism Act*.

Before I begin my formal comments, I would like to state at the outset that if the Committee would like me to; I would be prepared to return at the conclusion of your hearings.

Since the introduction of the Bill four days ago, it has received considerable attention from the media, the legal community and from Parliamentarians. The quality of the debate in the House speaks to the real concern that we all share about the threat of terrorism.

Some aspects of the Bill have received more attention than other aspects. Some components have generated criticism; I recognize that. This Bill is obviously intended to respond to a serious threat to our society, and let me state at the outset that it does not shy away from confronting that threat directly.

There are many components to C-36. These include such core elements as a process for establishing a list of terrorist groups, a definition of terrorist activity, comprehensive new terrorism offences, new tools such as preventive arrest and investigative hearings and new measures to deal with discrimination and hatred.

There are also many other new measures, including amendments to the *Official Secrets Act*, the *Canada Evidence Act*, the *Federal Court Act* and others. However today, I intend to focus on the central elements of Bill C-36.

One of the fundamental questions posed this week is: why do we need C-36?

Why do we need new tools to fight terrorism?

Yes, we have hijacking, sabotage and murder offences already in the *Criminal Code*. They remain

available to us. But terrorism is a special threat to our way of life. When dealing with groups that are willing to commit suicidal acts of mass destruction against innocent civilians, it is necessary to consider whether existing legislative tools are adequate to the challenge.

As the Prime Minister stated in the House, "...it has become clear that the scope of the threat that terror poses to our way of life has no parallel. We in North America have been extrodinarily fortunate to live in peace, untouched by attack. That has changed."

The insidious nature of terrorism has dictated the need for new measures. These measures must have a preventive focus because punishing terrorist crimes after they occur is not enough. We must be able to disable organizations before they are able to put hijackers on planes or threaten our sense of security as we have seen in recent days with the scare of anthrax. We must have mechanisms in place to go after terrorist organizations and put them out of business.

How does Bill C-36 accomplish this?

As I have said, the Bill does not avoid the tough questions. A first step in disabling and dismantling terrorist groups is to identify them. Bill C-36 - and I refer you to section 83.05 - sets up a distinct procedure to enable Governor in Council to create, by regulation, a list of entities which have carried out, attempted, participated in, or facilitated terrorist activities or who are acting on behalf of such entities, or at their direction or in association with them.

This list supports the application of other provisions in the Bill, including the new anti-terrorism offences, the new offences relating to the financing of terrorism, and provisions relating the freezing, seizure and forfeiture of terrorist property.

I am the first to agree that this "listing" procedure must be carefully designed. Being on the list does not itself constitute a criminal offence. Where offences are charged, each of the elements would still have to be proved beyond a reasonable doubt. My colleague, the Solicitor General, will speak in detail to this provision in his remarks to follow.

Another core element of the Bill is the definition of "terrorist activity". Many of the other elements of the proposed legislation are directly tied to the concept of terrorist activity, including the establishment of the list of terrorist groups and the new terrorism offences. There are significant legal consequences attached to terrorist activity, so it was important that we set out clearly what we meant by the term.

The definition in the Bill is detailed. We have directly confronted the challenge of defining the target of this legal regime. I am aware of concerns expressed by some members around this table with respect to this definition and I urge the Committee to consider it carefully.

The definition first makes reference to offences that are set out in the twelve international conventions relevant to terrorism. This is one form of "terrorist activity".

However, a general definition is also provided. It covers acts that are committed "in whole or in part for a political, religious or ideological purpose, objective or cause" that:

- are intended to intimidate the public or force governments to act,
- and which are intended to cause serious harm.

Harm includes causing death or serious bodily harm by the use of violence, endangering a person's life, causing a serious risk to the health and safety of the public, or causing substantial property damage likely to result in harm to persons. Thus, there is a clear connection to acts of violence, especially threats to the Canadian public.

The intended harm can also include acts intended to cause serious interference with or serious disruption of an essential service, facility or system. But here it must be noted that we have added an important safeguard. This definition of "terrorist activity" does not apply to lawful advocacy, protest or dissent or stoppage of work that does not involve an activity that is intended to cause other types the harm, related to violence to persons, that I have described. The examples I have seen in the press of lawful political dissent being stifled are answered by the carefully designed criteria designed to exclude this interpretation.

The Bill goes on to establish comprehensive new terrorism offences under the *Criminal Code*. There are distinct offences of participating, facilitating, instructing and harbouring, as well as extensive offences with respect to the financing of terrorist groups. For example, with respect to "participating", it will be an offence to recruit an individual to receive training with a terrorist group.

I would like to observe as well that various offences, including those relating to facilitation and instruction of terrorist activity, are specifically defined to be crimes regardless of whether the terrorist activity facilitated or instructed is finally carried out. This goes back to my earlier point about the preventive focus of the Bill.

One of the elements of the Bill that has received considerable attention is that of preventive arrest. Under this provision, if a police officer believes, on reasonable grounds, that a serious terrorist offence is about to take place and suspects, again on reasonable grounds, that the arrest of a particular person would prevent it, then that person can be arrested to be brought before a judge.

The object of bringing the person before the court is for the court to consider whether restrictions should be imposed on the person's movements and associations. The court may impose such conditions or may release the person without conditions. If the person refuses to accept conditions, the court may commit him to prison for up to 12 months.

Some have inappropriately likened this power to those of the former *War Measures Act*. I would like to assure the Committee that the preventive arrest measures we are proposing under this Bill would be only available under strictly defined conditions and would be subject to numerous procedural safeguards.

Save for emergency circumstances, the consent of the Attorney General would be required as a prerequisite. The person must be brought before a provincial court judge within 24 hours, or as soon as possible, and a maximum further period in detention of 48 hours is allowed following appearance before the judge. Under the *War Measures Act*, by way of comparison, a person could be detained for 7 days prior to being brought before a judge, and detention could continue for 21 days.

Rather than being similar to provisions under the *War Measures Act*, the provisions of this Bill are more accurately compared to existing provisions of the *Criminal Code* relating to arrest without a warrant of a person who is about to commit an offence and release with a recognizance. We are extending and expanding these concepts under the Bill for the special purposes of preventing terrorism.

Again I remind members that this bill targets acts of terrorism.

Another widely debated element of the Bill has been the provisions on investigative hearings. There are concerns about the power to compel testimony in these hearings. I wish to assure the Committee that here again we have included numerous limitations and safeguards. While a person may be ordered to provide evidence by the judge, privilege and other laws relating to non-disclosure would continue to apply, as would the right to counsel. Also, the evidence will not be used against the person in future criminal proceedings.

It is important to note that there is an existing procedure under the *Mutual Legal Assistance Act* that already allows us to do this in Canada to gather evidence for other countries. The United States has investigative grand juries that perform evidence-gathering functions. The power that we are proposing is not unknown under the law of Canada or the United States. We are extending Canadian law in this area for the special purpose of terrorist investigations and, as I have said, subject to appropriate safeguards and limitations.

Legislative changes would also be made under the Bill to allow us to better address discrimination and the communication of hatred within Canada. I want to emphasize the point made by the Prime Minister in the House the other day. Discrimination against persons of any religious or racial or ethnic background will not be tolerated.

Bill C-36 introduces amendments to the *Criminal Code* that will allow the courts to order the deletion of publicly available hate propaganda from computer systems such as an Internet site. The *Canadian Human Rights Act* will be amended to clarify that communication of hate messages using new technology, such as the Internet, constitutes a discriminatory practice. And *Criminal Code* amendments would create a new offence of mischief, motivated by bias, prejudice or hate based on religion, race, colour, national or ethnic origin, committed against a place of religious worship or associated religious property.

I would like to highlight a number of other issues. Some have suggested that the provisions of the Bill are not strong enough. It has been suggested that we create an offence of "membership" in a terrorist group. We are not proposing doing this.

As discussed during the debate on Bill C-24, dealing with organized crime, it would be exceedingly difficult to define membership. Also, the *Charter* risks of criminalizing membership would be high. Moreover, we question the necessity of a membership offence given the broad ambit of the participation offence we have provided under this Bill, similar to what we did in C-24 on organized crime.

I now want to address the general question of respect for the *Charter of Rights and Freedoms*. I wish to assure this Committee that this Bill has been subject to a very thorough review on *Charter* grounds and that its measures have been designed so that they will respect the values embodied under the *Charter* and, we expect, survive legal challenges. These measures have been developed with a concern for what has been referred to as "human security".

We have tailored specific measures to the objective of addressing terrorism and improving national security, we have taken into account international law and the laws of other countries, such as the United States and the United Kingdom, and we have adopted safeguards within individual measures.

Finally, I would point out a provision at the end of this Bill concerning review of these measures. Section 145 requires that three years after this Bill receives Royal Assent that a comprehensive review be undertaken of its provisions and its operation. A Committee of the House or of the other Chamber, or possibly a special joint committee, would have one year to complete this review.

Only after an appropriate period of time — we think three years — will we have some evidence of the effectiveness of these major new laws. Unfortunately, we cannot expect that terrorism will have disappeared in only three years, but I have no doubt that a thorough review will be beneficial at that time. However, I am aware of the suggestion that for some clauses, a sunset clause may be more appropriate.

I welcome the Committee's review of this Bill. Its provisions are worthy of close scrutiny and of debate. I also welcome consideration of possible refinements to its provisions. We must ensure that the Bill is the most balanced and effective response possible.

And at this point, I welcome your questions.

Thank you.

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